The Solicitors' Journal

Vol. 99 May 21, 1955 No. 21

CURRENT TOPICS

The Law's Delays and the Bar—

A COMMENT by the Legal Correspondent of *The Times*, in its issue of 11th May, on the speeding up of the hearing of actions in the Queen's Bench Division appeared under the headlines " Reduction in Law's Delays ; Serious Prospect for Bar." " Last autumn," he wrote, " the delay between entry and hearing was about ten months. The majority of the cases in the present list which may be heard this week were entered in November or December last, representing a delay of only about five and a half months. Of the remainder it appears likely from the arrangement of the cases in the list that the delay was occasioned by the parties or their representatives, rather than by lack of judicial facilities, in most cases." It was felt in the legal profession, according to the writer, that this rapid consumption of arrears must be due to a decrease in the number of cases being fought. Members of the common law bar were already faced with a prospective loss of fees owing to considerable business being transferred to the county courts under the County Courts Bill, which had been dropped for the present. THE MASTER OF THE ROLLS replied in court on the same day that there had been an unfortunate juxtaposition of headlines, and that the suggestion that the reduction in the law's delays was, in some way or another, disadvantageous to the Bar was " plainly not at all justified." Mr. Justice HILBERY, in the Queen's Bench Division, said that it was erroneous and misleading to speak of the period between the entry of a case and the date it came on for hearing as a period of " delay." " If in any case at the time of entrance, both parties were ready for trial, it could be put in the next week's warned list." The Legal Correspondent (*The Times*, 12th May) repeated that there had been a very substantial reduction of the period between entry and hearing date, and suggested that one factor might be that fewer cases were being begun in the Queen's Bench Division, and another might be the use of Chancery judges to expedite the hearing of cases in the Queen's Bench Division, which again suggested lack of work in the Chancery Division. If the Legal Correspondent of *The Times* is right it may well be that recruitment into the profession will be affected and trained barristers will seek other employment. It is a matter which could usefully be investigated by both branches of the profession.

—And Solicitors

ANOTHER answer to Mr. Justice HILBERY was given by Mr. HUGH MONTGOMERY-CAMPBELL, of Messrs. Bower, Cotton and Bower, in a letter in *The Times* of 16th May, 1955, this time from the point of view of solicitors engaged in litigation. The majority of the non-jury actions in the Queen's Bench Division being heard to-day, he wrote, were set down in the months of October and November, 1954, the most recent date being 12th November. The shortest intervening period between setting down and trial was, therefore, six months. At the

CONTENTS

time of setting down, he continued, solicitors are not ready for trial, but they can be comfortably ready within two or three months of setting down. Any excess over three months can properly be described as delay. Whatever may be the position at the Bar, solicitors and litigation managing clerks are extremely busy, he continued. A managing clerk who knows, as he has known until recently, that an action will not come on for trial until ten months after it is set down, naturally turns to more urgent business, and only prepares the case for trial some few weeks before it is due to be heard. He wrote that that was why the practice whereby cases can be put at the top of the list by agreement has been so seldom used. The present practice for witness actions in the Chancery Division to have a date fixed for hearing—normally some two months after the date of setting down—was preferable for solicitors, witnesses and litigants.

Representative Appeals

THOSE who believe that there is some wider purpose to be served by criminal proceedings than the mere punishment of the particular offender, and those whose daily experience brings home to them the indelible nature of the stigma which unfortunately attaches to the family of the convicted person, will alike find little to acclaim in the inevitable decision of the Court of Criminal Appeal in *R.* v. *Rowe*, *ante*, p. 339. Desiring ardently, no doubt, to have her late husband's name cleared, the widow of a man who had been convicted of false pretences, and had applied in time for leave to appeal, sought to continue the application after his death. Had the punishment been a fine, then it would have been open to the court to allow the application to proceed, for then the representatives of the deceased's estate would have had a pecuniary interest in trying to save or to recover the amount of the penalty. But the punishment was personal to the offender, a sentence of eighteen months' imprisonment. In these circumstances, said the court, the prisoner having died, nobody was now affected by the judgment, and there was no ground on which it could be said that anyone had a legal interest in appealing to the court. The principle seems to fit in with the English civil law of defamation, which in general gives no right to vindicate the reputation of the dead. It is true that if after judgment in an action for libel or slander and after an appeal has been entered either party should die, his representatives can, according to some Commonwealth cases referred to in Gatley on Libel and Slander, 4th ed., p. 413, obtain an order of revivor under Ord. 17, r. 4. But that facility seems to be founded on the obligation created by the judgment to pay costs which, one way or the other, would give the deceased's estate a pecuniary interest in the outcome of the appeal.

Circumstances Alter Cases

CERTAIN feature paragraphs, admirable within their limitations, by which a popular contemporary newspaper instructs its readers in the legal position resulting from everyday happenings are perhaps open to the criticism that they lead the public to confuse factual circumstances with legal principles. The spilling of soup down a dress, annoying as it undoubtedly is to the owner of the dress and to the intended consumer of the soup, is an indeterminate incident in a case history. Liability to make amends of one sort or another turns on the relationship in law of spiller and victim and on other factors which vary from instance to instance. The newspaper gave a correct diagnosis, we think, but a later correspondent sought to translate a domestic situation into the different surroundings of a public restaurant. Lawyers themselves, though they really know better, often find it hard to call to mind a truly relevant authority because of the pressing consciousness of previous cases in which merely the circumstantial detail was similar. du Parcq, L.J., had a *dictum* about it. "It is a grave error," he said, in *Easson* v. *London & North Eastern Railway Co.* [1944] 1 K.B., at p. 426, "to suppose that guidance is necessarily to be found in a case where a passenger has fallen through a carriage doorway by referring to all the other cases in the books in which passengers have fallen through carriage doorways. It is a truism to every lawyer that what one must look for is a general principle."

Building Societies Report

PART 5 of the Report for 1954 of the Chief Registrar of Friendly Societies (H.M. Stationery Office, 2s.) published on 16th May, deals with the work of his department under the Building Societies Acts and the business transacted by building societies during 1954. The amount advanced on mortgage by building societies during the year exceeded £300,000,000 for the first time. The estimated total of £373,000,000 exceeded by £74,000,000 the figure for 1953, which was itself a record. Of the 352,000 advances made during the year, 91 per cent. were for amounts that did not exceed £2,000. The report includes an analysis of mortgage advances based on the replies voluntarily given by the larger societies to a questionnaire addressed to them by the department. It shows that 85 per cent. of all advances, representing 92 per cent. of the total amount advanced, were to assist the purchase of houses to be occupied by the mortgagors. Seventeen per cent. of the advances were made on the security of newly-erected houses and it is estimated by comparison with the statistics published in the Housing Returns for 1954 that building societies were concerned in assisting the purchase of about two-thirds of all houses erected by private builders during the year. Three investigations were started in 1954 and five in 1955 under s. 11 of the Prevention of Fraud (Investments) Act, 1939. A matter that has come to notice as a result of enquiries under the Act relates to the inadvisability of a society confining a large proportion of its advances to special types of security. In a case under investigation, the society had made a substantial proportion of its advances on the security of licensed and private hotels and boarding houses and farms. In other cases brought to light it was found that gifts had been made to societies either in money or otherwise apparently without any direct consideration. Even when such gifts are made in the utmost good faith, the transactions call for particular enquiry. In one case a solicitor had paid advertising expenses for a society for a number of years. During the last year for which accounts were available advertising expenses amounted to over £900. Arrangements have been made to keep the conduct of these societies under regular review.

DISCHARGE OF MAINTENANCE ORDER FOR ADULTERY

By s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, a magistrates' court may, on the application of the married woman or of her husband, and upon cause being shown *upon fresh evidence* to the satisfaction of the court, at any time alter, vary or discharge an order. The section continues that if a married woman, upon whose application an order shall have been made, shall voluntarily resume cohabitation with her husband or shall commit an act of adultery, such order shall upon proof thereof be discharged. So far as adultery is concerned s. 7 was amended by s. 2 of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, to the effect that the court, if it thinks fit, may refuse to discharge the order if in its opinion the act of adultery was conduced to by the failure of the husband to make such payments as in the opinion of the court he was able to make under the order.

Examination of s. 7 will show that it is divided into two parts, the first dealing with the application to alter, vary or discharge, and the second with resumption of cohabitation and adultery. It is contended by some that the two parts are independent and that application to the court can be made under either of them, but, on the other hand, it would seem that the resumption of cohabitation and adultery are two instances which come under the word "discharge" in the first part, and, apart from *Roberts* v. *Roberts* [1953] 3 W.L.R. 863; 97 Sol. J. 798, which is dealt with later, this seems to be the view of the High Court. See *Matthews* v. *Matthews* [1912] 3 K.B. 91, and *Timmins* v. *Timmins* [1919] P. 75; 63 Sol. J. 287. In *Natborny* v. *Natborny* [1933] P. 1, Slesser, L.J., said: "I think that when one looks at s. 7 closely it appears that it does not contemplate two separate applications at all . . . there is only one application possible, to alter, vary or discharge, one of those three; all the Legislature does thereafter is to require that if the married woman shall commit an act of adultery such order shall be discharged. That is to say, in the case of discharge, not of alteration or variation, the court must, subject to the subsequent amendment, discharge the order, where otherwise there remains a discretion." This case decided that an application for discharge on the ground of adultery is not subject to the six months' time limit laid down by the Magistrates' Courts Act, 1952, s. 104.

Fresh evidence means something which has happened subsequently to the hearing or trial or evidence which was not in the possession of the applicant and which could not with reasonable diligence have been ascertained at that time. It does not mean or include evidence which might have been called but which was not for some reason or other. Fresh evidence can only be such evidence as would be admitted as a ground for a new trial in the High Court or the discovery of fresh facts (*Johnson* v. *Johnson* [1900] P. 19). It would appear that the evidence must be fresh in relation to what were the immediately preceding relevant proceedings.

There have been two decisions of the High Court, reported in 1953–54, dealing with the subject under consideration, which, at first sight, are difficult to comprehend together, but which, on closer examination, may be more readily reconciled. The first of these is *Roberts* v. *Roberts*, *supra*. This was an appeal by the wife against an order discharging a maintenance order she had previously obtained. At the time of the making of the original order in 1950 the husband had knowledge of his wife's association with a particular man and he believed that knowledge was sufficient to prove adultery, but he did not raise the matter at the hearing of the application for a maintenance order. The association apparently continued after the wife obtained her order, and the husband alleged that the man had continued to live in the same house as the wife after the date she obtained her order. For the wife, it was contended that the words "upon fresh evidence," because they appeared in the first part of s. 7, must be read into the second part, and that the act of adultery could only be proved by evidence of facts occurring since the making of the order, namely, fresh evidence, and that evidence of the nature of the association between the wife and the man named before the making of the order should be excluded.

The court considered itself bound by *Ramsdale* v. *Ramsdale* (1945), 89 Sol. J. 447, which decided that although the issue was whether or not adultery had been committed since the date of the order, the court should hear evidence about the nature of the alleged association both before and after that date. In the *Ramsdale* case, Lord Merriman, P., said that it ought to go without saying that to deal properly with such a case a court must have before it all the evidence of association and not only that part of it which happens to relate to events later than a certain date. Manifestly, the whole of the evidence which could be given about the nature of the association, both before and after the making of the order, was relevant to the charge. Wallington, J., said: "I do think it is desirable that emphasis should be placed upon the impossibility of dealing with a case of this kind, where the inference of adultery, if it is to be drawn at all, must depend upon proof of inclination and opportunity . . . unless the whole of the story is told almost from beginning to end. It is quite conceivable that you might have a case in which the whole of the evidence of inclination is founded upon facts that took place before the original hearing, and the whole of the evidence of opportunity is founded upon facts that are proved to have taken place after the original hearing, so that you get one half of the case before and the other half after the original hearing. Therefore it is obvious in a case of that sort that if you only have evidence of the facts that have taken place after the original hearing you could not hope to make out a proper case." The wife's appeal was dismissed. It is perhaps unfortunate that the court's attention, presumably, was not drawn to *Natborny* v. *Natborny*, *supra* (a decision of the Court of Appeal), in *Roberts* v. *Roberts*, the court appears to have dealt with the matter as if application was made under the second part of s. 7 and stated that no authority had been given that the words "upon fresh evidence" used in the first part must be read and imported into the latter part.

The other case with which this article is particularly concerned is *Brammer* v. *Brammer* [1954] 1 W.L.R. 599; 98 Sol. J. 234. The wife had obtained an order in 1944 and committed adultery in 1946. In 1947 the husband condoned the adultery. In 1950 the order was varied in the amount payable. In 1953 the husband's application for discharge of the order on the ground of adultery in 1946 was refused by the justices and he appealed. In his judgment Lord Merriman, P., said that had the husband applied for discharge in 1947 he would have succeeded, for *Read* v. *Read* [1952] P. 119 decided that condonation did not apply to this section. When the order was varied in 1950, the adultery was not raised by way of defence or objection. His lordship referred to *Natborny* v. *Natborny*, *supra*, and said he attached great importance to it, for it showed that the whole of s. 7 must be read together, and that the earlier part of the section, stating that "cause" must be "shown on fresh evidence to the satisfaction of the court at any time" governs the whole

section, although the power to alter, vary or discharge is discretionary, whereas on proof of adultery or resumption of cohabitation the order must be discharged, and there is no discretion except as regards the proviso on payment under the order. The charge of adultery must be brought, therefore, on fresh evidence. The question was whether in 1953 the evidence was " fresh." The husband was not producing the allegation of adultery on fresh evidence, since it was available to him when the order was varied in 1950, and his appeal was dismissed.

It is the references to fresh evidence in the two cases that may be the cause of some confusion between them, but it is the writer's view that had fresh evidence not been referred to in the judgment in *Roberts* v. *Roberts, supra*, the decision would have been the same. The act of adultery must be one which has been committed since the making of the order, because it relates to the discharge of an order which *shall have been made*. In effect, therefore, the adultery had to be proved by fresh evidence and the husband produced such evidence of his wife's continued association. What the court decided was that on production of such evidence all other relevant evidence was admissible to form part of the essential ingredients for the inference of adultery. This is in accord with the general principles in matrimonial proceedings that, normally, the whole married life of the parties should be looked at and not merely what has occurred since the previous proceedings. The evidence which was available at the time of the first hearing was supplemented by the fact that the man in question had continued to live in the same house as the wife in circumstances which gave ample opportunity of indulging a guilty affection. Had the husband not been able to give any fresh evidence, it is possible that the decision might have been different, for the circumstances would not have been the same as in *Ramsdale* v. *Ramsdale, supra*, which was a new allegation of adultery after an order had been made but in which it was sought to produce evidence of facts occurring before the order. If the husband in *Roberts* v. *Roberts* had been relying solely on the evidence of adultery available to him at the time of the making of the order the principles applicable to fresh evidence would have applied, and the court might have come to the same conclusion as it did later in *Brammer* v. *Brammer*.

In this latter case, where *Roberts* v. *Roberts* was not referred to, the husband was in possession of the necessary evidence when the application for variation was heard, and, with no subsequent evidence to support his allegation, his evidence could not then be said to be " fresh " so as to succeed in his application for discharge. Had he been in possession of evidence which could be accepted as " fresh " he would have been able to produce evidence of all material facts both before and after the date of variation, again as necessary ingredients for an inference of adultery, and this would have been consistent with *Roberts* v. *Roberts*.

J. V. R.

VERY MISLEADING

With apologies to Sir Alan Herbert

HERRING *v.* PERIODICAL PEARS, LTD.

PICKWICK, J., delivering judgment, said: The facts of this case are not in dispute. On 1st April, 1954, the defendant company delivered to the plaintiff a cheque for £2 5s. 6d. in payment of a debt owing by them to the plaintiff. The cheque was one of the company's usual cheques, specially printed for them, and bearing upon its face the words usually found on such instruments: " This cheque requires endorsement." On the back of the cheque were printed the words:—

" Received from Periodical Pears Ltd. the sum of £.....

(*Signature*).....

.....19.....

2d. stamp required for amounts of £2 and over.

Completion of this receipt will serve also as endorsement."

The plaintiff signed his name on the back of the cheque, but not in the space provided, nor did he put a 2d. stamp on the cheque. He paid the cheque into his banking account, and it was later returned by the defendants' bankers marked: " Receipt requires completion." In due course the plaintiff brought the present action for the amount owing to him. The defendants do not deny the debt, but claim that in sending the cheque they made tender of payment which the plaintiff by his conduct refused.

On these facts it might well be thought that the defendants have a complete answer to the action; but the plaintiff argues that he properly endorsed the cheque and that the defendants, in seeking through their bankers to obtain a receipt from him on the cheque itself, were imposing a condition which invalidated the tender. I have been referred to *Laing* v. *Meader* (1824), 1 C. & P. 257, in which Abbot, C.J., held that a tender was not good if the giving of a receipt was made a condition of it. But that case is not directly in point, for Abbot, C.J., was basing his judgment on an earlier statute; he said: " He [the debtor] ought, according to 43 Geo. 3, c. 126, to bring a receipt with him, and require the other party to sign it." To-day, as counsel for the defendants has argued, the position is governed, in so far as it is governed at all, by 54 & 55 Vict., c. 39, s. 103 of which provides: " If any person . . . (2) in any case where a receipt would be liable to duty refuses to give a receipt duly stamped . . . he shall incur a fine of ten pounds." To the extent that this provision conflicts with *Laing* v. *Meader*, it must, of course, prevail over that earlier authority.

The plaintiff claims that there is no conflict; that the Stamp Act does not make the receipt a condition of payment of a debt, and that, indeed, as a revenue Act it is concerned merely with the collection of the duty, which is properly no concern of the debtor, except to the extent that he can complain of the non-stamping of a receipt and, by lodging that complaint in the proper quarter, can cause the State to enforce a penalty. It must be remarked that the debtor may, presumably, be left still without his receipt after the penalty has been paid; and it must clearly be inferred that that penalty is enforced for non-payment of the duty rather than for refusal of the receipt itself. The plaintiff argues that, were there any general duty to give a receipt, as contrasted with the special duty to stamp some receipts, the Act would not have been restricted to that class of receipts which, in fact, require stamping; were the amount in question in the present case under £2 the Stamp Act could not anyhow be brought in question. I cannot see that the plaintiff can be answered on this point; it seems to me that the right to demand a receipt, stamped or unstamped, rests in common sense and the common law rather than upon any statute,

and that in any event it cannot be made a condition of payment.

I do not think that the differences in form in the several different types of receipt-endorsement cheques which have been before the court are material to the present issue. Some bear a clear direction to the payee to sign the receipt, some state that payment will not be made until the receipt is properly completed. The defendants' cheque did neither, but the facts of the case are not affected by that. For on the facts it is apparent that the defendants did make completion of the receipt a condition of payment.

By prior arrangement with their bankers the defendants were refusing payment of their debt until the receipt was properly completed. In *Re Hone (a bankrupt); ex parte the Trustee* v. *Kensington Borough Council* [1950] 2 All E.R. 716 Harman, J., held that, at least as between the trustee in bankruptcy and the bankrupt, payment of a cheque is effected only when that cheque is met; and he seemed to express doubt as to whether this was not true also as between debtor and creditor, despite earlier decisions to the contrary; and *Re Owen, deceased; Owen* v. *Inland Revenue Commissioners* [1949] 1 All E.R. 901, on quite different circumstances, is to the same effect. The plaintiff here was thus expected to sign a receipt before he got his money; and the defendants' reply, that dishonour of the cheque would automatically return the receipt to him so that he could not suffer by signing it, does not seem to me to answer the point. The plaintiff urges that, in fact, he did not refuse to give a receipt at all; for, first, he was never asked for one, he was merely given an opportunity of giving one; and, second, he could not properly be so asked until payment was effected.

Counsel for the defendants made the point that the endorsement receipt saves the creditor the trouble and expense of posting a separate receipt to the debtor. I do not think that this point has any substance. In the first place, the fact that a convenience is offered does not take from the offeree the right to decline it; if the plaintiff prefers to post a separate receipt (after he has received the money) he may surely do so. But in the second place I am not convinced that he has any duty to do so. It would be odd if the debtor who seeks to use the convenience of the postal system instead of bringing the payment in person could thereby impose upon the creditor (who has normally not asked for payment in this way) the duty of spending twopence-halfpenny more than he would otherwise have had to do in returning the receipt.

On these narrow grounds the plaintiff's case must prevail, and there is, therefore, strictly no need for me to deal with his wider argument. But it seems to me that that argument raises matters of some general interest, and is too important to be ignored here. It became apparent in the course of the hearing that the plaintiff is moved in this matter by a manifold resentment. He resented being bullied into giving a receipt, and choosing his ground shrewdly he has contested that point successfully. But he was moved by a more general resentment, against the practice of giving stamped receipts of any kind; and it seemed even as though he resented (still more generally) all forms of revenue collection by the authorities. Many men of goodwill share this last resentment, but that is not here in question. Fewer, perhaps, have been moved to indignation by the stamp duty on receipts.

It is a part of the plaintiff's case on this wider issue that the cheque system makes the receipt redundant. It is clear that a debtor must have some convenient means of proving that he has paid his debt; and in early days when most payments were made in cash, and to-day when any particular payment may be so made, a formal receipt is the easiest and most generally convenient form in which such proof can be obtained. But when payment is made by cheque, as a large number, probably a majority, of payments are made to-day, the passing of a cheque through the banking system is itself an excellent mode of proof that payment has been effected. It is, indeed, a better mode of proof than a simple receipt, for whereas a man can deny that he signed a receipt, he cannot deny that money has gone to the credit of his banking account; or if he does so the bank can be called to prove, positively, the fact of the payment.

Evidence has been given that, in reliance on this fact, a number of businesses do nowadays entirely dispense with receipts, either separate or printed on their cheques. However, many businesses still insist upon having receipts, very many of them using their bankers to collect and check these receipts for them; and although it would seem clear that there is no business necessity for them to do so, that they are wasting their own time and that of their creditors, I would feel compelled to hold, were it necessary to do so, that in the light of that section of the Stamp Act which I have already quoted they have a right so to insist—at least, where the amount of the payment is £2 or over. The plaintiff is, I think, justified in his impatience with the unnecessary formality, but that formality is still legally enforceable, though not directly by the debtor and not, as it would appear, for payments of £1 19s. 11d.

But I feel compelled to express the strongest sympathy with the plaintiff's argument that the increasing use of the cheque system, and the reliance, perhaps also increasing, of some of its users upon it for evidence of payment, makes nonsense of the revenue provisions designed to levy a tax of twopence upon each payment of £2 or over. The tax depends now not, as some taxes appear to depend, upon the whim of the tax gatherer, but upon the bookkeeping system of the debtor. If he waives the receipt, the revenue must waive the duty. The endorsement-receipt saves postage; doing without a receipt altogether denies the revenue even more. A tax so arbitrary in its incidence, even were it not, as the plaintiff has urged, a tax on enterprise and business initiative, would be a bad tax. The fact that it is a small one is not the point.

All this would not in itself help the plaintiff; and I am delighted, and am grateful to him, that he chose his ground of action so intelligently. On his narrower point, he wins his case; on the wider, I hope that the publicity given in the popular Press to what I see has already been named "the Tuppenny Case" will serve to call public attention to this small but distressing point of business inefficiency and illogical taxation.

P. E. S.

At the monthly meeting of the board of directors of the SOLICITORS BENEVOLENT SOCIETY, held on 4th May, Mr. Arthur Meaden Maslen, LL.B., of Bournemouth, was elected a member of the board. Thirty-one solicitors were admitted as members of the association, bringing the total membership up to 7,973. Twenty-one applications for relief were considered and grants totalling £2,760 were made, £115 of which was in respect of "special" grants for clothing, etc. All solicitors on the Roll for England and Wales are eligible to apply for membership and application forms and General Information leaflets will gladly be supplied on request to the association's offices, Clifford's Inn, Fleet Street, London, E.C.4. The minimum annual subscription is £1 1s., and a single payment of £10 10s. constitutes life membership of the association.

A Conveyancer's Diary

TESTAMENTARY GIFTS NOT NOWADAYS READILY IMPLIED

THE argument that the court does not favour any construction of a testamentary document which must have the result of an intestacy, partial or total, is often heard, but it has long been rather a threadbare one; and the present tendency of the courts to give effect to the language actually used by the testator whenever possible without addition or subtraction has made the argument something of a *tabula ex naufragio*. This is well illustrated by the decision in *Re Arnould* [1955] 1 W.L.R. 539, and p. 338, *ante*.

The will was a home-made document. By it, the testator appointed an executor and directed the payment of his debts, etc. (the terms in which this direction was given suggest that the will was made on a stationer's will form). Then, after certain specific gifts and legacies, the testator stated that he wished all other money belonging to him to be "up in trust" for all his four grandchildren (naming them) "until each reaches the age of twenty-five years." On this gift, it was first held that the expression "other money" constituted a specific gift of certain assets of the testator, and did not constitute a residuary gift. The case is not reported on this point, but doubtless the reference to "other" money and the context afforded by the other gifts made by the testator were considered to be sufficient to displace the application of what, since the decision of the House of Lords in *Perrin* v. *Morgan* [1943] A.C. 399, has been the general rule of construction in the case of home-made wills, that the word "money" or "moneys" comprehends the residuary personal estate of the testator. There was also, in the case now being considered, a point on the punctuation of this part of the will, but the principal question for determination was this: was the gift merely a gift of a portion of the income of the fund to each of the grandchildren until he or she should attain the age of twenty-five years, with the capital of the fund eventually undisposed of, or was it a gift, by implication, of the capital of the fund to the grandchildren upon them all attaining the age of twenty-five years, with a gift of the income in trust in the meantime?

There are a number of cases decided in the eighteenth century which show that at that time the courts had no great difficulty in implying a gift of the capital of a fund from a direction to pay or apply the income for the benefit of a person or a class of persons during minority. These cases are referred to in a passage in Jarman on Wills, 8th ed., p. 682, where, however, doubt is cast upon their authority. They are certainly rather curious decisions. The first of them is *Newland* v. *Shephard* (1723), 2 P. Wms. 194, in which the testator gave the residue of his real and personal estate to his trustees, to apply the produce and interest thereof for the maintenance of his grandchildren until they should come of age: there was no further disposition of the residue. The Lord Chancellor (Macclesfield) founded his decision entirely on the intention of the testator; the intention was plain, he said, that the grandchildren should have the residue after the age of twenty-one. The alternative was an intestacy, but it was plain that the testator had given everything away from his heir at law by vesting the whole of his estate in fee in his trustees, and that, in the Lord Chancellor's view, would not have been done had anything been intended to remain in the heir. To this part of the reasoning, however, the editors of the sixth (1826) edition of these reports appended the note that though "the whole legal estate is given to trustees, yet if any part of the beneficial interest is undisposed of, the heir shall have it by way of resulting trust," and supported this view by the citation of a number of authorities, including the well known cases of *Tregonwell* v. *Sydenham* (1815), 3 Dow 210, and *King* v. *Denison* (1813), 1 V. & B. 260. There is no doubt that this view is the right one, and force is given to this objection to Lord Macclesfield's decision and the reasoning for it by the fact that in *Fonnereau* v. *Fonnereau* (1745), 3 Atk. 315, Lord Hardwicke, L.C., expressed his disapproval of the earlier case.

Nevertheless, very similar decisions were reached in several later cases. In *Atkinson* v. *Paice* (1781), 1 Bro. Ch. Cas. 91, there was a gift of a fund of personalty to *A* and *B* during their lives and the survivor of them during her life, and if *B* should have no issue, to be transferred in trust to *X* till he should come of age. (The report of the case is questioned, but there seems to be no dispute about the essential terms of the gift for the benefit of *X*, which is the only thing that matters in the present connection.) Lord Thurlow, L.C., dealt with the difficulty even more shortly than Lord Macclesfield had disposed of the similar point in *Newland* v. *Shephard*; he said that by the words "till of age" the testator meant to give the fund to *X*, and the trust given till then was only to "point out the mode." A somewhat easier case was *Peat* v. *Powell* (1760), 1 Eden 479, where there was a gift of residue to executors in trust for the testator's son *G* till he should attain the age of twenty-one, when the trust should cease, and no other gift of residue. This gift was construed by Lord Northington as having the same effect as if the testator had given his residue in trust for *G* until he should attain the age of twenty-one, and then to *G* absolutely; and he referred to *Newland* v. *Shephard* as a case much stronger than that before him.

This was the current of authority until *Wilks* v. *Williams* (1861), 2 J. & H. 125. The testatrix directed her trustees to invest the residue of her estate, after payment of debts and legacies, and to pay the income thereof to two nieces, naming them, equally, and at the death of the two nieces the testatrix directed that the income was to be continued to their children till they should come to the age of twenty-one years. And the testatrix finally constituted two named persons trustees for the two nieces and their children. There was no other residuary gift. In his judgment, Sir W. Page-Wood, V.-C., first referred to *Newland* v. *Shephard*, but refused to give any opinion whether that case had been rightly decided or not. Then, he said, there was another line of cases, of which no one, he apprehended, would be disposed to disapprove, where it had been held that upon a gift of real or personal estate upon trust for the children of any person until they should attain the age of twenty-one, followed by a gift over to a third person in case the children did not live to attain that age, there was a clear implication that if the children did attain that age, they were to take absolutely. The case before him, in the learned Vice-Chancellor's opinion, occupied an intermediate position between that class of case and the *Newland* v. *Shephard* line of cases. It was much stronger in favour of a construction giving an absolute interest to the children of the testatrix's nieces than anything in *Newland* v. *Shephard*: in that case there had been a mere

devise upon trust for the grandchildren until twenty-one, whereas in the case before him it was clear from the vesting of the property in trustees and the constitution of the trustees as trustees for the nieces and their children, without the intermediate bequest of the income until the children should attain twenty-one, that there would have been an absolute gift of capital for the nieces and their children. "In the absence of the clause constituting them trustees for the nieces and their children, it would have been [the trustees'] duty to pay the dividends, as directed, until the children attained twenty-one. The insertion of that clause, therefore, must be looked upon as emphatic, and as indicating that, after the children attained twenty-one, the trust for their benefit was still to continue." As to this decision, the first reason given, the vesting of the property in trustees, has already been referred to; the other, the constitution of the trustees as trustees for the class of beneficiaries, is quite distinct from anything in the *Newland* v. *Shephard* line of cases, and this decision may therefore be said to have left those cases unaffected.

The real assault on these old authorities came in *Re Hedley's Trusts* (1877), 25 W.R. 529. The testatrix gave her residue, after directing payment of debts and legacies, to a trustee upon trust for her daughter till she should attain the age of twenty-one years or marry; again, there was no other gift of residue. Hall, V.-C., held that there was no implied gift of the capital to the daughter on her attaining the specified age or marrying. In the then current mode of construing wills, he said, "we must take words as we find them and give effect to them; we must not guess at them or create complications"; and he went on to criticise *Newland* v. *Shephard* and *Peat* v. *Powell* with other cases in the same sense. Construed in accordance with the modern rules of construction, which did not permit the insertion of words which were not to be found in the will, but required the court to give effect to the clear ordinary meaning of the words employed, there was nothing in the testatrix's will to indicate that any beneficial interest was given to anyone except the limited interest given to the daughter until she should attain the age of twenty-one years or marry.

That was the state of the authorities when *Re Arnould* came to be decided, and in deciding it, Upjohn, J., followed *Re Hedley's Trust* in preference to the earlier cases. On that basis there could be only one conclusion: it was impossible to imply any gift of capital to the testator's grandchildren. But having reached this decision, the learned judge expressed the strong suspicion that he was not carrying out the real intentions of the testator. That is the difficulty, and it is one which makes one wonder whether the approach of the old Court of Chancery to cases of this kind, haphazard as the results may sometimes appear to us to-day, did not in the end attain a higher degree of justice, in the broadest sense, than the more carefully co-ordinated methods of construction employed to-day.

"A B C"

Landlord and Tenant Notebook

"BUSINESS STATUTORY TENANCY"

DESPITE the criticism levelled at the expression "statutory tenancy" in Rent Act cases (e.g., "convenient but inaccurate": *Keeves* v. *Dean*; *Nunn* v. *Pelligrini* [1924] 1 K.B. 685 (C.A.); "inappropriate": *Dudley and District Benefit Building Society* v. *Emerson* [1949] Ch. 707 (C.A.)), the expression "business statutory tenancy" has now been used, by Sellers, J., in *Castle Laundry (London), Ltd.* v. *Read* [1955] 2 W.L.R. 943; *ante*, p. 306, to describe the relationship between the parties to a tenancy affected by Pt. II of the Landlord and Tenant Act, 1954. And I think its use is likely to continue.

The "Notebook" observed, when discussing *Orman Bros., Ltd.* v. *Greenbaum* [1954] 1 W.L.R. 1520 (since upheld: [1955] 1 W.L.R. 610 (C.A.)) on 15th January last (99 SOL. J. 38), that some people were slow to realise the revolutionary nature of the enactment mentioned. *Castle Laundry (London), Ltd.* v. *Read* rather bears this out.

The facts were that the plaintiffs held of the defendant a twenty-one-year lease of business premises commencing 25th December, 1947, which either party had a right to determine at the expiration of the seventh or fourteenth year by six months' previous notice. On 11th June, 1954, the defendant gave the required notice terminating the lease on 25th December, 1954. On 19th January, 1955, he served a notice to terminate in the form prescribed under the Landlord and Tenant Act, 1954, the date of termination being 22nd July, 1955. The question then arose whether that notice fell foul of the provision in s. 25 (3) (*a*): "the date of termination specified in a notice under this section shall not be earlier than the earliest date on which apart from this Part of this Act the tenancy could have been brought to an end by notice to quit given by the landlord on the date of the giving of the notice under this section." And the plaintiffs took out an originating summons asking for decisions on the points whether the notice of 19th January was effective and whether the landlord had power to determine the lease before 25th December, 1961, i.e., at the end of the fourteenth year.

The position was that, when the notice of 11th June, 1954, was given, the Landlord and Tenant Act, 1954, had not been passed. It was passed on 30th July, coming into force on 1st October (special provision was made by which notices could be issued before the latter date). By s. 24, a tenancy to which Pt. II of the Act applied was not to come to an end unless terminated in accordance with the provisions of that Part; and it was common ground that Pt. II did apply to the lease, and it had (it appeared) been held in *Orman Bros., Ltd.* v. *Greenbaum, supra*, that the section in effect annulled notices current on 1st October, 1954 (I will elaborate and modify this statement later). The defendant had recognised this when serving, on 11th January, 1955, a notice which, it was agreed, satisfied the requirements of the provisions of Pt. II, as set out in s. 25 and in the prescribing regulations (Form 7 in the Landlord and Tenant (Notices) Regulations, 1954).

The plaintiffs' case was based on the provisions of s. 25 (3) and (4), and these have to be set out fully if the position is to be appreciated: "(3) In the case of a tenancy which apart from this Act could have been brought to an end by notice to quit given by the landlord (*a*) the date of termination specified in a notice under this section shall not be earlier than the earliest date on which apart from this Part of this Act the tenancy could have been brought to an end by notice to quit given by the landlord . . .; and (*b*) where apart from this Part of this Act more than six months' notice to quit would have been required to bring the tenancy to an end, the last foregoing subsection shall have effect with the substitution

for twelve months of a period six months longer than the length of notice to quit which would have been required as aforesaid. (4) In the case of any other tenancy, a notice under this section shall not specify a date of termination earlier than the date on which apart from this Part of this Act the tenancy would have come to an end by effluxion of time."

The argument advanced for the tenants was, of course, that the notice to determine given on 11th June, 1954, being a nullity, the landlord had, as it were (through no fault of his own), missed the bus, and must now wait for the next, i.e., give, if he so wished, a notice to terminate expiring at the fourteenth year of the tenancy.

If the notice to determine really were a nullity, or the tenancy a periodic one with periods of seven years, this argument would no doubt be sound. But Sellers, J.'s judgment makes it clear that the notice of 11th June, 1954, was not to be considered ineffective for all purposes. The learned judge held that it "operated to bring the lease—the *contractual obligation* between the parties—to an end in December, 1954." It followed that the notice to terminate given on 19th January, 1955, had not been given at an earlier date than the lease itself provided.

I have already mentioned that the learned judge made use of the expression "a business statutory tenancy," and I italicised the words "contractual obligation" in the passage just quoted in order to emphasise what this authority has brought out.

Parliament, when conferring "security of tenure" on tenants, can do so in a variety of ways. It will suffice if I contrast two of them: the Rent Restrictions Act method and the Agricultural Holdings Act method. The Rent Acts make it clear that when a tenancy agreement has come to an end by virtue of itself, but the tenant remains in possession, he does so because the Acts deprive the landlord of any legal remedy. The jurisdiction of the courts is limited: no order for the recovery of possession shall be made unless, etc. (Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1)); the tenant shall observe and be entitled to the benefit of all the terms and conditions of *the original* contract, etc. (Increase of Rent, etc., Restrictions Act, 1920, s. 15 (1)). But the farmer tenant is given security by provisions which ensure that a notice to quit must be given whether the tenancy agreement provides for such or not (Agricultural Holdings Act, 1948, s. 3) combined with others entitling him, in certain circumstances, to impugn a landlord's notice by giving a counter-notice (*ibid.*, s. 24).

The rent control legislation does not suggest that the agreed tenancy continues: it has been shown that what it creates is a "status of irremovability" and the tenant cannot assign his rights (*Keeves* v. *Dean*; *Nunn* v. *Pelligrini* [1924] 1 K.B. 685 (C.A.)), or dispose of them by will (*John Lovibond & Sons, Ltd.* v. *Vincent* [1929] 1 K.B. 687 (C.A.)); on the other hand, his trustee in bankruptcy cannot disclaim the "tenancy" and thus destroy his right to occupy (*Sutton* v. *Dorf* [1932] 2 K.B. 304). But for the successful server of a counter-notice everything appears to go on as before; I say "appears to," because I admit that I know of no authority to support the statement; but I do not think that Sellers, J., would call the result—normally established, it is true, before the expiration of the ineffective notice to quit—a "statutory" tenancy.

The Landlord and Tenant Act, 1954, Pt. II, does, as regards some of the language used, suggest that the framers could not quite make up their minds which method to choose. The plaintiffs in *Castle Laundry* (*London*), *Ltd.* v. *Read* could, and presumably did, stress the fact that s. 24 (1) says: "A tenancy to which this Part of this Act applies shall not come to an end unless . . .", so that one might reasonably expect that, if the condition which followed were not fulfilled, the relationship simply continued. It may be said that the Act contemplates that sooner or later one party will do something calculated either to sever relations altogether or to replace the "statutory" by a "new" tenancy; but in the meantime, if the tenant holds under that "business statutory tenancy," it would not, I submit, be right to say that its incidents correspond to those of a Rent Act statutory tenancy. There does not, for instance, appear to be any ground for suggesting that his interest would not form part of his estate on his decease.

R. B.

HERE AND THERE

PIVOT OF THE LINE

It is particularly hard to imagine the Attorney-General invisible, an intangible presence felt rather than seen, a ghostly haunting, a bodiless symbol, a notional pivot, a token. Yet, according to a recent pronouncement of Vaisey, J., that is how Queen's Counsel practising in the Chancery Division should train themselves to regard him. The pronouncement was delivered on a problem of precedence and was addressed to three "silks," including a former Solicitor-General, Sir Lynn Ungoed-Thomas, present in court on motion day. The learned judge indicated that according to the ancient practice, now somewhat neglected but in his opinion proper to be rehabilitated, the Attorney-General's place was in the middle of the front row, and though he was most likely absent in the body he should yet always be deemed to be present for, visible or invisible, he remained the keystone of an arch. On his right would sit the Queen's Counsel next in seniority to him, on his left the one after and so right and left, right and left with all the others present. This dressing by the centre had, his lordship indicated, a particular practical advantage in that it enabled a judge to tell at a glance the order in which senior counsel were entitled to move without a desperate hasty search by himself or his clerk through the elusive columns of the Law List. One may, however, perhaps with great respect suggest that at least since the opening of the Law Courts in the Strand it would have been far more practical and convenient if the dressing had been by the right with the Attorney-General, whether in the body or out of the body, acting as right-hand marker and the rest numbering smartly to the left. After all, the military tradition is that the right of the line is the place of honour. That would have the special and peculiar advantage of combining with the right to move the court the simultaneous right to freedom of movement. One does not know on what plan the seating arrangements for counsel in the old Court of Chancery were constructed, but the eminent ecclesiastical architect who designed the Law Courts obviously worked on the assumption that counsel would no more dream of leaving court while a case was in progress than a well-mannered congregation would dream of walking out of church before the end of the service, just as cinema seating is still designed quite irrelevantly in the tradition, over optimistic even in its origins, that there would be no late-comers or early leavers at a play. So in church it hardly matters how narrow is the space between the benches or how sharply sloping the rests for one's prayer book. It is far otherwise on a crowded motion

day in a Chancery Court with counsel who have addressed the court drawn out from the centre of the row by centrifugal force, trampling on the feet of their fellows and knocking their papers to the floor with clutching hand on amply billowing gown.

THE FORMER TIMES

In these days when "silks" in the Chancery Division are among the few classes of the community who are not enjoying the vaunted benefits of "full employment" the jostling is unlikely to reach a perilous crisis point. As Vaisey, J., remarked nostalgically, "It is so rare nowadays that I have the privilege of a number of leading counsel before me." He looked back into the past as a senior general to the gorgeous multi-coloured reviews of his youth or a veteran diplomat might recall the lavish splendour and shining orders and uniforms of the great receptions of long ago. When Vaisey, J., was a young Queen's Counsel in a packed, serried row of other Queen's Counsel things were very different. "Eve, J., used to complain bitterly if the counsel before him were not properly arranged in order . . . There was always great strictness maintained as to exactly where you sat. Any young 'silk' who pushed himself into the middle of the row would have been frowned at, at any rate by Eve, J.: 'Who are you? You are out of place'." Eve, J., was a most remarkable character, vigorous, humorous, plain spoken, rotund, who sat on the Bench for well over twenty years and retired reluctantly at eighty-one. Away from the courts he was happiest roaming about the country in his gipsy caravan. He brought into the nineteen-twenties the robust individualist atmosphere of his Victorian youth. Masterful and lucid in handling the law and the facts in court, his determined face and close-cropped head were entirely appropriate to his rural habits, to the old clothes and the old hat in which he might be found cooking bacon and eggs on his camp fire.

A SPARK

Perhaps a slight touch of the old vigour flashed in the courts for a moment at the end of last month when the Attorney-General really did appear in the Chancery Division to oppose, successfully in the event, a motion for an injunction to order the Minister of Agriculture to withdraw from each House of Parliament a scheme regulating the marketing of potatoes. Just as Eve, J., exuded the atmosphere of sturdy Victorianism, so the Attorney-General's personality never seems to be quite of the period in which it is his fate to live. There is something slightly reminiscent of the seventeenth century about his build, his appearance and his manner. "To attempt to influence Members of Parliament in their conduct in the House by any kind of threat is clearly a breach of the privileges of Parliament and punishable by Parliament as a contempt. In the old days those who attempted that kind of thing were dealt with and one can find instances where counsel and their clients have been summoned to the Bar of the House and dealt with for contempt." Upjohn, J.: "Are you threatening me or whom are you threatening?" The Attorney-General: "I am not threatening anyone." So the flash set off no train of gunpowder. But if there had been any intention to threaten one can hardly imagine anything more likely to cause a spectacular explosion than to threaten the son of Upjohn, K.C., whose vigour and irreconcilability in argument became a legend during his long life and after.

Richard Roe.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED

ANNUAL REPORT

The sixty-sixth annual general meeting of the Society was held at Oyez House, Norwich Street, Fetter Lane, on Tuesday, 17th May, Mr. K. D. Cole in the chair.

The chairman's statement circulated with the report and accounts said:—

"I have again to submit to you a report which I think you will regard as satisfactory. There was a considerable increase in our sales, which reached a record figure, and, as in 1953, our works and branches were working under pressure throughout the year. Further progress was made in achieving the maximum use of the modern building in which our London Works is now housed and additional machinery has been installed. As a result of the steps we have taken, and with the full co-operation of our works employees, both sales and profit there substantially exceeded those of any previous year.

Profit

Increased sales in almost all departments, higher efficiency in production and the fact that departmental and head office expenses did not rise during the year in proportion to the sales, all contributed to the increase of £56,882 in the profit for the year. The 1954 profit has only once been exceeded—in 1951, when the sales were lower.

Reserves

We carry at our retail branches a considerable amount of stock on which purchase tax has been paid, and to provide against the major part of the loss we may suffer if the tax is reduced or removed at any time in the future the directors have thought it prudent to set aside the sum of £12,500. The printing and stationery trades have strongly urged the Chancellor to remove purchase tax from stationery, and the arguments for its removal have had the support of the Federation of British Industries and of many individual industries.

Having regard to the further rebuilding in London, to which I shall refer later, the transfer of £10,000 to the rebuilding reserve is also proposed.

Dividend

The Directors recommend a final dividend of 13 per cent., making 18 per cent. for the year, against 15 per cent. in respect of 1953, and to carry forward the sum of £46,226.

Stocks

Our stocks at the end of the year were somewhat higher than at the end of 1953 and consisted as usual mainly of paper, either plain or printed. This increase is in accordance with our policy of ensuring adequate supplies, having regard to the present difficulties and delays in replenishing stocks.

Capitalisation of reserves

The Directors propose to recommend the capitalisation of reserves by the issue of one new share for every two now held. The effect of this will be to reduce the substantial difference between the present nominal capital of the Society and the net value of the assets after deducting the secured loan. The reserves to be used for the purpose would be in the first place the share premium account and the capital reserve, totalling £68,014, the balance being taken from the general reserve. The Capital Issues Committee has given its consent to the proposed issue. It is intended to call in June or July an extraordinary general meeting to approve the increase of capital and alterations to the articles increasing the maximum number of shares which may be held by any one shareholder from 500 to 750, and making an appropriate adjustment in the article providing for the participation of the staff in the profits.

Oyez House

Owing to the continued need for additional accommodation for the London Works and other departments, the directors have decided to proceed as quickly as possible with the building of the southern portion of Oyez House. This will approximately double the floor area we have in that building at present and will enable us to bring together departments now housed elsewhere. The

directors are confident that the extra space will enable us to improve the service to our customers. They hope to place the contract in the autumn. The cost of the further building is likely to be rather more than £300,000, part of which will be provided from our cash resources and the remainder by a further loan.

Insurance against loss of profits

The directors have given careful consideration to the advisability of insuring against loss of profits, having particular regard to the concentration of the Society's activities in Oyez House, and have decided to insure against the loss which would arise directly from a serious fire in that building.

Company precedents

The Directors have learned with regret of the retirement from practice of Mr. Cecil W. Turner, of Lincoln's Inn, barrister-at-law. Mr. Turner first settled a draft form of memorandum and articles for the Society in 1907, and the directors have expressed to him their appreciation of his valuable assistance over a period of nearly forty-eight years, during which time company printing has become an important part of its business.

Dymond's Death Duties

The Directors have also learned with regret that Mr. Robert Dymond, solicitor, formerly Deputy Controller of the Estate Duty Office, whose book on the Death Duties has been published by the Society since 1920, will be unable, owing to advancing years, to edit further editions. The twelfth edition of his work, which was published early this year, is experiencing satisfactory sales.

Staff

I have already referred to the co-operation of the staff of the London Works and I cannot speak too highly of the work of managers and staff in the head offices and all departments of the Society, under the leadership of the managing director. In all we have some 930 employees and the improved results for the year are due in no small measure to their loyal work.

The current year

Our returns so far this year continue on a satisfactory level and the directors hope that, if present conditions are maintained, the year 1955 will show an equally good result."

The report and accounts were unanimously approved, and Mr. John Venning and Mr. Charles Percival Law Whishaw, retiring by rotation, were re-elected as directors.

The remuneration of the auditors was fixed for the ensuing year.

The meeting terminated with a vote of thanks to the directors.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

COURT OF APPEAL

RATING: WHETHER CONTRACTORS' REMOVABLE HUTS RATEABLY OCCUPIED

London County Council *v.* Wilkins (Valuation Officer)
Same *v.* Knight (Valuation Officer)

Evershed, M.R., Jenkins and Romer, L.JJ.
30th March, 1955

Appeal from the Lands Tribunal.

In the first appeal building contractors, having entered into a contract with the council to build a school on a site owned by the council, erected on the site, for the purpose of carrying out the contract, various temporary structures used for offices, stores and a canteen. The site had been handed over to the contractors but the council retained certain specific rights of access. Two of the structures had corrugated iron sides and roofs and the others were wooden sectional buildings with wooden roofs and wooden floors on sleepers. None of the buildings was affixed to the ground other than by its own weight. They remained on the site for about eighteen months and were then dismantled. The local rating authorities made a proposal, which was accepted by the local valuation court for North-East London, to amend the valuation list by adding thereto these structures as a rateable hereditament. That decision was affirmed by the Lands Tribunal and the council appealed. The second appeal, which was heard concurrently with the first, related to a similar subject-matter.

JENKINS, L.J., delivering the first judgment, said that the four prerequisites of rateable occupation were those stated by Mr. Rowe in *John Laing & Son, Ltd.* v. *Kingswood Assessment Committee* [1948] 2 K.B. 116, 119, and approved by the Court of Appeal in that case [1949] 1 K.B. 344: first, there must be actual possession by the alleged occupier; secondly, possession must be exclusive for the particular purposes of the occupier; thirdly, the possession must be of some use or value or benefit to the possessor; and fourthly, the possession must not be for too transient a period. Each of those heads was satisfied in this case. As regards exclusive possession, it was immaterial that by the contract the contractors were given the use of the site for the purpose of erecting the buildings, as distinct from being put in occupation or possession of the site. The form of words used suggested a mere licence, but, as Lord Russell of Killowen said, in *Westminster Council* v. *Southern Railway Co.* [1936] A.C. 511, the determining factor was actual *de facto* occupation and it mattered not whether that occupation was the result of a licence or of a tenancy or other form of agreement. His lordship referred to *Holland* v. *Hodgson* (1872), L.R. 7 C.P. 328, in which Blackburn, J., had stated a general rule as to what degree of attachment to the land was needed to make a chattel part of the land. He was not, however, satisfied that the same considerations applied in the case of a mortgagee (which was that case) as in the present case where the question concerned rateability. Applying the reasoning in *City of Glasgow Assessor* v. *Gilmartin* [1920] S.C. 488, and the observations of Lord Wright, M.R., in the *Southern Railway* case [1936] A.C. 511, at p. 559, although the various structures were no further affixed to the land than by their own weight, they were not independent chattels in the sense that they could be brought on to the site in the condition in which they were when erected and removed at will in that condition. Each of them was a structure which could only exist as such so long as it remained assembled on the site, and while on the land the structures became part of it for rating purposes. The onus of showing that, notwithstanding that they were originally chattels, they had been converted into something else had been successfully discharged by the valuation officer.

ROMER, L.J., and EVERSHED, M.R., agreed. Appeals dismissed. Leave to appeal.

APPEARANCES: *G. D. Squibb* and *Lord Croft* (*J. G. Barr*); *Maurice Lyell*, Q.C., and *Patrick Browne* (*Solicitor of Inland Revenue*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[2 W.L.R. 1095**

DE-RATING: TIMBER MERCHANT'S PREMISES: WHETHER A RETAIL SHOP

Dolton Bournes & Dolton, Ltd. v. Osmond (Valuation Officer)

Evershed, M.R., Jenkins and Romer, L.JJ.
31st March, 1955

Appeal from the Lands Tribunal.

A company of timber importers, merchants and saw millers appealed against a direction, made by the local valuation court for East Kent and Canterbury, and confirmed by the Lands Tribunal, that its business premises should be transferred to Pt. I of the valuation list on the ground that it was not an industrial hereditament, but was a retail shop or "premises of a similar character . . . where retail trade or business is carried on" within the proviso to s. 3 (1) of the Rating and Valuation (Apportionment) Act, 1928, as expanded by s. 3 (4). The premises covered a large area and consisted of separate sections where the timber was stacked and sawn. There was also a small office where inquiries were dealt with but there was no window display of timber for sale or shop counter. Seventy-seven per cent. of the timber was processed before sale and practically all of it was sold to builders, merchants or factories.

EVERSHED, M.R., said that giving the words in the definition their ordinary everyday meaning, as Lord Dunedin had said

should be done in *Turpin* v. *Middlesbrough Assessment Committee* [1931] A.C. 451, the premises did not appear to be within the definition. Greene, L.J., had said, in *Ritz Cleaners, Ltd.* v. *West Middlesex Assessment Committee* [1937] 2 K.B. 642, that the premises must be a shop or similar thereto, and that the business done there must be retail trade or be similar thereto. The essential characteristic of a shop was that it was a place to which the public, in the sense of the ordinary man in the street, were encouraged to resort for the purpose of having their particular wants supplied, that was for shopping, and to which they did in fact resort for that purpose (see *Toogood & Sons, Ltd.* v. *Green* [1932] A.C. 663). Physical characteristics and the appearance of the hereditament were inconclusive (see Lord Dunedin in *Turpin's* case, *supra*, at p. 473). In the present case the public, in the ordinary sense of the term, were not invited to come to the hereditament and the appearance, layout and general nature of the business done were all against the view that the hereditament was a retail shop or had a similar character thereto. It did not follow that if the premises were not within s. 3 (1) (*b*), as expanded, that they would come within (*c*) as a " distributive wholesale business." The attempted definition in *W. S. Shuttleworth (Slough), Ltd.* v. *Lane* (1953), 46 R. & I.T. 103, a case which the tribunal had followed, was over-simplified; nor was *Revenue Officer of Surrey* v. *Gridley Miskin & Co., Ltd.* (1931), 2 D.R.A. 236, in point.

JENKINS and ROMER, L.JJ., agreed. Appeal allowed. Leave to appeal.

APPEARANCES: *Percy Lamb*, Q.C., and *J. P. Widgery* (*William A. Crump & Son*); *Cyril Harvey*, Q.C., and *Patrick Browne* (*Solicitor of Inland Revenue*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 62

EASEMENT: ENJOYMENT FOR TWENTY YEARS: INTERRUPTION: PRESCRIPTION ACT, 1832

Reilly *v.* Orange

Singleton, Jenkins and Morris, L.JJ.
26th April, 1955

Appeal from Birkenhead County Court.

The Prescription Act, 1832, provides by s. 2: " . . . That no claim which may be lawfully made at the common law . . . to any way or other easement . . . when such way or other matter . . . shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of twenty years. . . ." By s. 4: ". . . That each of the respective periods of years hereinafter mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question, and that no act or other matter shall be deemed to be an interruption, within the meaning of this statute, unless the same shall have been or shall be submitted to or acquiesced in for one year . . ." In 1932 and 1933, two contiguous plots of land abutting on a road were conveyed to the plaintiff and defendant. The plots had formerly been in common ownership, and the conveyances and plans had been prepared without viewing the premises. The conveyances provided that access to the rear (western) part of each plot should be given by a common way nine feet wide astride the common boundary; but at the road end the portion of the way on the defendant's plot was below the level of the road and of the plaintiff's plot so that it was impracticable to make a roadway there. In the circumstances, the parties made an agreement in 1934 whereby the defendant was given permission to use a driveway on the plaintiff's land as a means of access. Differences having arisen, the plaintiff took proceedings in the county court in 1954 to restrain the defendant from trespassing; the defendant counter-claimed for a declaration that he had a perpetual right of way. The deputy judge gave judgment for the plaintiff, finding that under the agreement the user of the drive by the defendant was only to continue until he had made a new way on his own land, which he had done in 1953. The defendant appealed.

JENKINS, L.J., said that the defendant, notwithstanding the deputy judge's finding, claimed to succeed on two grounds: (1) that he had had twenty years' uninterrupted enjoyment of the right claimed, as required by the Act of 1832; and (2) (which could only arise if the first point was successful) that, though the right claimed originated in the agreement of 1934, that permission did not prevent the twenty years' user establishing his right. The evidence as to the actual date of the agreement was indefinite. The action was commenced on 1st July, 1954; so, on the evidence, the defendant had failed to prove twenty years' user down to the date of the commencement of the action. But it was argued for the defendant that by s. 4 no act or matter counted as an interruption unless acquiesced in for one year; it followed that, as over nineteen years' user before action brought was proved, the defendant's right was made good as there could be no interruption acquiesced in for one year between action brought and the completion of the full period of twenty years. It was sought to apply *Flight* v. *Thomas* (1841), 8 Cl. & F. 231, to the present case, the argument being that the commencement of the action constituted an interruption, and that as the action was not commenced until after the easement had been enjoyed for more than nineteen years, the interruption could not last for the required period of one year and title was complete at the time of action brought. That argument could not prevail. The commencement of the action was not an interruption within s. 4, but an event marking the date down to which the requisite period of user must be shown. A full twenty years' uninterrupted period must be shown down to action brought, but interruptions not acquiesced in for at least one year were not to be counted. Accordingly, the first submission failed and the second did not strictly arise; but it would be surprising if an agreement between two neighbours which was intended to be of a personal and temporary character should produce, contrary to the intention of both, a prescriptive right of way for all time in favour of any owner of the dominant tenement. In any event, the permission had been revoked before the twenty years had run out, so that this contention must also fail. The appeal should be dismissed.

SINGLETON and MORRIS, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *W. L. Blease* (*Ranger, Burton & Frost*, for *G. F. Lees & Son*, Birkenhead); *K. G. Routledge* (*Kinch and Richardson*, for *Percy Hughes & Roberts*, Birkenhead).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 616

RENT RESTRICTION: SHARED ACCOMMODATION: "PART OF HOUSE LET AS A SEPARATE DWELLING"

Paisner and Others *v.* Goodrich

Denning, Romer and Parker, L.JJ. 27th April, 1955

Appeal from Ilford County Court.

The owner of a house let to a tenant four unfurnished rooms on the first floor " together with the use in common of the back bedroom on the first floor " on a weekly tenancy, and it was further provided that the tenant should be entitled to the use (in common with the landlord) of the bathroom and lavatories of the house. After the agreement had been signed the landlord refused to allow the tenant to use the back bedroom, locking the door. That continued for four years until the landlord's death, when the tenant again had the use of the room. In an action by the landlord's successors in title for possession, the tenant pleaded the Rent Acts. The county court judge held that the tenant was not entitled to the protection of the Rent Acts since the case was one of sharing accommodation within the meaning of *Neale* v. *Del Soto* [1945] K.B. 144 and not one of the letting of part of a house as a separate dwelling within s. 12 (2) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. The tenant appealed.

DENNING, L.J., in a dissenting judgment, said that there was no decision which bound them, on the question whether the sharing of a spare bedroom took away from the tenant the protection of the Acts and they must therefore look at the Acts and ask themselves whether in the case before them a part of the house was " let as a separate dwelling." If it was, then the tenant was protected by the Acts and did not lose that protection because some other part of the house was shared with the landlord. In his view the four rooms on the first floor were let as a separate dwelling and were never shared and the tenant was therefore protected by the Acts in regard to them. He would allow the appeal.

ROMER, L.J., said that, subject only to the question whether the sharing of the back bedroom in question was intended to be a concurrent or consecutive user of the room, and the effect on the position if the user was intended to be consecutive, he thought the state of affairs shown to exist in the present case was precisely within the gist of the *Neale* v. *Del Soto*, line of decisions, as explained by Asquith, L.J., in *Llewellyn* v. *Hinson*

[1948] 2 K.B. 385. Those decisions were binding on them, but it was sought to distinguish the present case by saying that the room was only placed at the partial disposal of the tenant as a spare bedroom and that for that reason, coupled with the alleged fact that the room was not essential to her, there was no sharing within the *Neale* v. *Del Soto* doctrine. From that point of view he could not distinguish the particular bedroom in the present case from any other bedroom which a landlord agreed to share with his tenant. With regard to the question of concurrent user, the tenant's submission was that the necessary inference was that the landlord and tenant could not have intended that the common use of the bedroom should be enjoyed concurrently, and that accordingly the principle of *Neale* v. *Del Soto*, *supra*, did not apply because only concurrent sharing fell within it. He was not prepared to hold that the question whether an intending sharing of accommodation was concurrent or consecutive was relevant in considering whether the doctrine of sharing applied. It had been for the first time suggested that it was so by MacKinnon, L.J., in *Cole* v. *Harris* [1945] K.B. 474, at p. 478, but the question had not been considered to be relevant in subsequent cases. Many a gloss had been put by judicial interpretation on the language of the Rent Restrictions Acts, and he was unwilling to add to their number by holding that a sharing which was or might be concurrent displaced their operation, although a consecutive one did not. In his opinion, therefore, the submission of the tenant on that point was incorrect. He had therefore, though with regret, arrived at the conclusion that the appeal must be dismissed. He said with regret, because if they had been able to approach the case unfettered by authority, his strong inclination would have been to hold that the four rooms which were let to the tenant constituted a separate dwelling for the purposes of the Acts. It seemed to be a curious result that although the tenant's right to share the bathroom and lavatories in the house (and she could scarcely get on without that right) did not deprive her of the protection of the Acts, the less important right to share the bedroom did. However, such, in his judgment, was the effect as authoritatively expounded of the *Neale* v. *Del Soto* series of decisions (unfortunate though it was), and he could not for himself see a legitimate means of escape.

PARKER, L.J., delivered an assenting judgment, expressing the view that all his sympathy was with the tenant who, by the landlord's conduct, was for a long time prevented from enjoying the use of the bedroom, and because, apart from authority, he would have had little doubt that what was let to her was a separate dwelling. Appeal dismissed.

APPEARANCES: *P. J. H. Benenson* (*Richardson, Sowerby, Holden & Co.*); *G. Avgherinos* (*Paisner & Co.*).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] **[2 W.L.R. 1071**

COMPENSATION FOR LOSS OF PROFITS NOT SUBJECT TO DEDUCTION FOR INCOME TAX

W. Rought, Ltd. *v.* West Suffolk County Council

Evershed, M.R., Hodson and Parker, L.JJ.
27th April, 1955

Appeal from the Lands Tribunal.

The West Suffolk County Council made a compulsory purchase order, which was duly confirmed by the Minister, for the acquisition of the greater part of certain leasehold factory premises owned and occupied by the claimant company for the purpose of its business of hatters' furriers. The council took possession of the premises in October, 1952, and it was not until midsummer, 1953, that the company secured alternative accommodation for its business. For eight or nine months the company was unable to carry on its business and it claimed compensation, *inter alia*, for loss of profit in respect of specific orders during the interruption of its manufacturing operations. The Lands Tribunal awarded to the company £11,600 under this head. The council contended that a deduction should be made from the amount awarded because the company would not be liable for income tax on the compensation moneys for temporary disturbance. The tribunal held that the liability to tax on the amount received was not relevant to the issue between the council and the company. The council appealed.

EVERSHED, M.R., said that an acquiring authority on a compulsory purchase of land had to pay by way of compensation such a sum as would put the landowner, so far as money could do it, in the same position as if his land had not been taken from him. The measure of compensation was the same as the measure of damages applicable to the case of a breach of contract or in tort (in cases where there was no question of punitive damages). That was the measure in *Billingham* v. *Hughes* [1949] 1 K.B. 643, in which the view that the principle applicable was dependent on the circumstance that the defendants were wrongdoers was expressly rejected. The tax liability of the company (if any) in respect of trading profits or gains was a question between the company and the Crown; and so far as the council was concerned, the question of income tax was *res inter alios actæ*. Accordingly, the council was not entitled to have any deduction made in respect of income tax from the compensation awarded for loss of profits.

HODSON and PARKER, L.JJ., agreed. Appeal dismissed. Leave to appeal.

APPEARANCES: *Geoffrey Lawrence*, Q.C., and *Harold Brown*, Q.C. (*Sharpe, Pritchard & Co.*, for *Alan F. Skinner*, Bury St. Edmunds); *Derek Walker-Smith*, Q.C., and *M. L. M. Chavasse* (*E. P. Rugg & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[2 W.L.R. 1080**

PRIVATE STREET WORKS: OBJECTION TO PROPOSALS: ONUS OF PROOF ON LOCAL AUTHORITY: JURISDICTION OF JUSTICES

Huyton-with-Roby Urban District Council *v.* Hunter

Denning, Birkett and Romer, L.JJ. 28th April, 1955

Appeal from Divisional Court on case stated by justices.

A local authority proposed to make up a road at the expense of the frontagers under the Private Street Works Act, 1892. A frontager raised an objection which was heard and determined in his favour by justices who found that the road was a public highway and repairable by the inhabitants at large. The council appealed by case stated to the Divisional Court, which examined the nature of the evidence adduced before the justices and allowed the appeal, holding that the absence of any evidence that public money had ever been spent on the road in question placed on the frontager the onus of proving that it was a public highway and that the evidence had not conclusively discharged that onus in his favour. The frontager appealed.

DENNING, L.J., said that the finding of fact of the justices that the road was a public highway could not be reversed on case stated unless there was no evidence to support it. The Divisional Court had said that, once it appeared that no public money had been spent on this road, the burden of proof shifted on to the frontagers to show that it was a highway repairable by the inhabitants at large. His lordship could not share that view. On the true interpretation of the Private Street Works Act, 1892, if the local authority desired to charge a frontager with the cost of making up the road, the legal burden rested on them throughout the case to prove that it was a "'street' . . . not being a highway repairable by the inhabitants at large." The Divisional Court had failed to distinguish between a legal burden imposed by law and a provisional burden raised by the state of the evidence. At the end of the case, the court had to decide as a matter of fact whether or not the road was repairable by the inhabitants at large. If it could come to a determinate conclusion, no question of the legal burden arose. The justices here had come to a determinate conclusion that the road was a public highway. The decision of the Divisional Court should be reversed accordingly, and the decision of the justices restored.

BIRKETT, L.J., agreed. According to the procedure laid down by s. 8 of the Act of 1892, no one could doubt that the onus would be on the local authority to show that the sum claimed from the frontager by the council was due. The true position of the frontager was not that of an appellant against the administrative act of the local authority, but that of one coming to the justices, as the statute entitled him to do, to state his objection and put the local authority to the proof of what they alleged against him.

ROMER, L.J., delivered a concurring judgment. Appeal allowed. Leave to appeal refused.

APPEARANCES: *Frank Gahan*, Q.C., and *J. Edward Jones* (*W. F. Foster, Hedge & Clare*, for *A. Stephen Cawson*, Liverpool); *Basil Nield*, Q.C., and *G. B. H. Currie* (*Sharpe, Pritchard & Co.*, for *H. E. H. Lawton*, Huyton).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[1 W.L.R. 603**

CHANCERY DIVISION

MORTGAGE: DEFAULT: ASSIGNMENT OF MORTGAGE TO STATUTORY TENANT: RIGHT TO FORECLOSURE

Silsby *v.* Holliman and Another

Upjohn, J. 27th April, 1955

Adjourned summons.

In 1904 *P* mortgaged certain property to the trustees of *O*. The mortgage deed excluded the right of the mortgagor to grant leases of the mortgaged property. In 1943, *P* granted a weekly tenancy of the property to *S*. In August, 1948, *P* served a notice to quit on *S*, who remained in occupation under the protection of the Rent Acts. In 1953 *P* died. After his death no interest was paid by his executors in respect of the mortgage, the estate being insolvent. In July, 1954, the mortgagees took out an originating summons against *P's* executors and *S*, asking for repayment of capital and interest and possession of the premises. In December, 1954, *S*, in order to remain in occupation of the premises, took a transfer of the mortgage from the mortgagees. He remained in possession and tendered the weekly rent, which the executors refused to accept. *S*, who had been substituted as the plaintiff to the summons, sought foreclosure of the mortgaged property. The defendant executors asked that there be a sale in lieu of foreclosure, contending that *S*, by reason of the transfer of the mortgage to himself, was no longer in possession as statutory tenant but as mortgagee; so that a sale would be with vacant possession. It was conceded that the proceeds of a sale subject to the rights of *S* as statutory tenant would be insufficient to discharge the mortgage debt.

UPJOHN, J., said that if the plaintiff was regarded as mortgagee in possession a sale would be with vacant possession and would provide a substantial surplus; if he was regarded as a statutory tenant the sale would be subject to his right to possession; in the first case a sale, and in the second case a foreclosure, would be proper. The position and rights of a so-called "statutory tenant" as established by the cases was summarised in Megarry on the Rent Acts, 7th ed., at p. 194. The defendants contended that when the plaintiff became mortgagee his lesser right disappeared, and he could only rely on his right to possession as mortgagee. On the whole, it would not be right to say that the plaintiff had lost his rights. He had a right to possession as long as he paid the rent. He had a right to go into possession, if he wished, as mortgagee. The fact that he had those two rights to possession did not mean that he had abandoned the lesser right to remain in possession under the Rent Acts; both rights subsisted. It was accordingly inequitable to order a sale at an unsubstantial price, and there must be an order for foreclosure. Order accordingly.

APPEARANCES: *A. C. Sparrow* (*Arbeid & Co.*); *J. Vinelott* (*J. A. Wolfe* with him) (*Simon, Haynes, Barlas & Cassels*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 1090**

QUEEN'S BENCH DIVISION

SHIPPING: SALE OF SHIP: WHETHER PURCHASER ENTITLED TO REJECT SHIP UNLESS REPAIRED: "FREE FROM AVERAGE"

Kelman and Another *v.* Livanos

McNair, J. 16th February, 1955

Case stated by an arbitrator.

In an agreement for the sale of a steamer on "Priam Terms," it was agreed, *inter alia*: "(4) The vendors shall deliver the steamer to the purchaser free from average . . . (6) For the inspection by Lloyd's surveyor of steamer's bottom and all outside parts below the waterline . . . the vendors agree to place the steamer in dry dock . . . In the event of the bottom or any outside parts below waterline being found broken or damaged, and purchasers decline to accept steamer in such state, it shall be repaired and put in good and seaworthy condition to the satisfaction of the surveyor at Lloyd's at the vendors' expense." On inspection, the Lloyd's surveyor found that repairs of indents to the keel plates and shell plates might be deferred until the owner wished the work to be done. He considered that the vessel was in good and seaworthy condition and could maintain her class; he made a recommendation to Lloyd's and issued an interim classification certificate to that effect. The purchaser refused to accept the vessel with those defects and requested that they should be made good. The vendors refused to pay for the repairs, taking the view that as the surveyor had thought no repairs were necessary to put the ship into a good and seaworthy condition they were under no obligation to pay. The contract was completed subject to an arbitration to decide who should bear the cost of the repairs. The arbitrator made an award in favour of the vendor, subject to the opinion of the court.

MCNAIR, J., said that the purchaser contended that the only power as arbiter conferred on the Lloyd's surveyor was to decide what repairs were necessary if the purchaser refused delivery. The only sound way to approach the construction of cl. (6) was to consider it in relation to the group of clauses in which it found its place. It was of the essence of the contract that before delivery there should be an inspection of the bottom by Lloyd's, and the contract provided for two situations: first, if the vessel was in a good and seaworthy condition, it was to be deemed "ready for delivery," and the purchaser was to pay the expenses of survey. Secondly, if the underwater parts were damaged and so not "in good and seaworthy condition," the purchaser could "decline to accept steamer in such state" and require it to be repaired to Lloyd's satisfaction at the vendor's expense. On the proper construction of cl. (6), as the surveyor had found that the vessel was seaworthy and able to maintain her class, the purchaser could not require repairs to be effected before acceptance. The next point concerned the meaning of the expression "free from average." The arbitrator had found that it had no settled technical meaning when used in connection with the sale of a ship. The purchaser had contended that this expression had been borrowed from the law of marine insurance, and connoted physical damage, and reference had been made to a number of dictionaries and textbooks. But physical damage had been dealt with in cl. (6) and elsewhere in the agreement, and the construction which would avoid awkward conflicts of construction, and would conform to a reasonable and accepted meaning which did not connote damage, indicated that, in the context, the expression meant "free from claims against the ship." Award affirmed.

APPEARANCES: *E. Roskill*, Q.C., and *J. Honour* (*Constant & Constant*); *M. Kerr* (*Staddon, Pyke & Barnes*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 590**

ROAD TRAFFIC ACT, 1930: PASSENGER INJURED BY STEPPING OFF MOVING BUS: WHETHER "ACCIDENT"

Quelch *v.* Phipps

Lord Goddard, C.J., Hilbery and Pearce, JJ.

28th April, 1955

Case stated by Oxford City Justices.

A bus slowed down as it approached traffic signals at red but did not stop because the signals changed to green before it was necessary to do so, and a passenger, thinking that the bus was going to stop at the signals, stepped off the platform whilst the bus was moving and fell forward on to the road, receiving slight injuries. The driver of the bus did not know of what had occurred until he reached the next stopping place, when the conductor told him; and as he did not consider that he was required to do so, he did not give the passenger the information required by s. 22 of the Road Traffic Act, 1930, which applies where, "owing to the presence of a motor vehicle on a road, an accident occurs whereby damage or injury is caused to any person, vehicle or animal", and did not report the accident to the police within twenty-four hours. A charge was preferred against the driver alleging failure to report an accident contrary to s. 22, but the justices, being of the opinion that "accident" within the meaning of the section was an accident involving some kind of collision, dismissed the information. The prosecutor appealed.

LORD GODDARD, C.J., said that the only thing which the court could lay down as a matter of construction was that there must be some direct, not an indirect, but a direct causal connection between the motor vehicle and the happening of the accident. It would not be enough if a person about to cross a road saw a motor car, changed his mind and stepped back instead of going on and happened to knock down a pedestrian, for that would be nothing to do with the driver of the motor car. In the present case the accident happened owing to the passenger getting off the bus while it was in motion, and although no one suggested that the driver was to blame, it was impossible to say that the accident did not occur owing to the presence of a motor vehicle on the road. The driver knew of the accident immediately after it had happened

because his conductor told him, and therefore there was a duty to report. The appeal was allowed, but the justices would no doubt see their way to give an absolute discharge.

HILBERY, J., agreed. He said that the limit, if it were a limit, to be put upon the words was only that they indicated that the presence of the motor vehicle on the road must be something more than a mere *sine qua non* and that there must be a causal connection between the accident and the presence of the motor vehicle on the road.

PEARCE, J., agreed. Appeal allowed.

APPEARANCES: *Frank Whitworth* (*Sharpe, Pritchard & Co.*, for *H. J. A. Astley*, Oxford); *M. R. Nicholas* (*Pattinson & Brewer*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[2 W.L.R. 1067**

LICENSING: APPLICATION FOR FULL LICENCE ON SURRENDER OF LIMITED LICENCE: JURISDICTION

R. *v.* Godalming Licensing Committee; *ex parte* Knight and Another

Lord Goddard, C.J., Hallett and Havers, JJ.

2nd May, 1955

Application for mandamus.

The owners of an hotel applied to the licensing justices for an annual unrestricted licence, offering to surrender their existing term licence, which was subject to certain restrictive conditions. The justices held that they had no power to grant the application, on the ground that the annual licence could not be granted while the term licence was still in force, and the term licence could not be surrendered for that purpose. The licensees moved for mandamus.

LORD GODDARD, C.J., said that the justices had been confused by the authorities cited to them, and no doubt realised that their decision had been wrong, as they did not appear to show cause. They had misread *R.* v. *Taylor* and *R.* v. *Amendt* [1915] 2 K.B. 593, which merely showed that one licence could not be substituted for another licence of the same sort with a reduced monopoly value. The present case was quite different, and was covered by *R.* v. *Corfield* (1922), 86 J.P. 216, which showed that a licensee who wished to get rid of conditions attached to his licence must apply for a new licence and not for a renewal of the old licence. *Carter* v. *Pickering* [1949] 1 All E.R. 340 showed by inference that it was possible for a licensee to surrender an existing licence and apply for a new licence. Section 7 of the Licensing Act, 1953, clearly showed that a current licence could be surrendered and another licence granted in its place. The justices must hear and determine the application according to law, and costs would be awarded against the brewers who had opposed below.

HALLETT and HAVERS, JJ., agreed. Order of mandamus.

APPEARANCES: *Harold Brown*, Q.C., and *N. H. Curtis-Raleigh* (*Gibson & Weldon*, for *Burley & Geach*, Petersfield).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 600**

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Agriculture (Ploughing Grants) (Scotland) Scheme, 1955. (S.I. 1955 No. 718 (S. 88).) 5d.

Bamber Bridge-Broughton Special Road Scheme, 1955. (S.I. 1955 No. 677.) 6d.

Carriage by Air (Non-International Carriage) (Colonies, Protectorates and Trust Territories) (Amendment) Order, 1955. (S.I. 1955 No. 710.)

Carriage by Air (Parties to Convention) (No. 5) Order, 1955. (S.I. 1955 No. 697.)

Colonial Civil Aviation (Application of Act) (Amendment) Order, 1955. (S.I. 1955 No. 709.)

Fire Services (Conditions of Service) (Scotland) Amendment Regulations, 1955. (S.I. 1955 No. 674 (S. 83).)

Hill Sheep (England and Wales) Scheme, 1955. (S.I. 1955 No. 679.) 6d.

Hill Sheep Subsidy Payment (England and Wales) Order, 1955. (S.I. 1955 No. 681.)

Hill Sheep (Northern Ireland) Scheme, 1955. (S.I. 1955 No. 680.) 6d.

Hill Sheep Subsidy Payment (Northern Ireland) Order, 1955. (S.I. 1955 No. 682.)

Hill Sheep (Scotland) No. 2 (Amendment) Scheme, 1955. (S.I. 1955 No. 686 (S. 84).)

Hill Sheep Subsidy Payment (Scotland) Order, 1955. (S.I. 1955 No. 687 (S. 85).)

Import Duties (Exemptions) (No. 3) Order, 1955. (S.I. 1955 No. 676.)

Iron and Steel Scrap (Amendment No. 1) Order, 1955. (S.I. 1955 No. 678.) 8d.

Juvenile Courts (Constitution) (Scotland) (Amendment) Rules, 1955. (S.I. 1955 No. 691 (S. 87).)

London-Edinburgh-Thurso Trunk Road (Mill Bridge, Doncaster) Order, 1955. (S.I. 1955 No. 669.)

Marriages Validity (Glynn Vivian Miners' Mission, Deal) Order, 1955. (S.I. 1955 No. 683.)

Merchant Shipping (Administration in the New Hebrides) Order, 1955. (S.I. 1955 No. 707.)

Merchant Shipping (Department of Scientific and Industrial Research Ships) Order, 1955. (S.I. 1955 No. 708.) 5d.

National Health Service (Inverness Hospitals Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 661 (S. 82).) 6d.

National Health Service (North Uist Hospitals Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 660 (S. 81).) 5d.

National Health Service (Renfrewshire Mental Hospitals Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 688 (S. 86).) 6d.

National Health Service (South Uist Hospitals Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 656 (S. 80).) 5d.

Nigeria (Appeals to Privy Council) Order in Council, 1955. (S.I. 1955 No. 706.) 6d.

Ploughing Grants Scheme, 1955. (S.I. 1955 No. 693.) 5d.

Potato Marketing Scheme (Approval) Order, 1955. (S.I. 1955 No. 690.) 1s. 5d.

Retention of Cables under Highways (County of Southampton) (No. 2) Order, 1955. (S.I. 1955 No. 664.)

Safeguarding of Industries (Exemption) (No. 3) Order, 1955. (S.I. 1955 No. 663.)

Southampton (Otterbourne Hill Common Reservoirs) Order, 1955. (S.I. 1955 No. 712.)

Special Constables (Pensions) Order, 1955. (S.I. 1955 No. 701.) 6d.

Special Constables (Pensions) (No. 2) Order, 1955. (S.I. 1955 No. 702.) 5d.

Special Constables (Pensions) (Scotland) Order, 1955. (S.I. 1955 No. 703.) 6d.

Special Constables (Pensions) (Scotland) (No. 2) Order, 1955. (S.I. 1955 No. 704.) 5d.

Stopping up of Highways (Birmingham) (No. 1) Order, 1955. (S.I. 1955 No. 714.)

Stopping up of Highways (Chester) (No. 1) Order, 1955. (S.I. 1955 No. 666.)

Stopping up of Highways (Kent) (No. 7) Order, 1955. (S.I. 1955 No. 665.)

Stopping up of Highways (Lancashire) (No. 2) Order, 1955. (S.I. 1955 No. 667.)

Stopping up of Highways (Plymouth) (No. 4) Order, 1955. (S.I. 1955 No. 670.)

Uganda (Amendment) Order in Council, 1955. (S.I. 1955 No. 705.)

Wages Regulation (Industrial and Staff Canteen Undertakings) Order, 1955. (S.I. 1955 No. 692.) 11d.

Wild Birds (Eggs of Common Gull) Order, 1955. (S.I. 1955 No. 724.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Husband and Wife—Desertion—Separate Existence under One Roof

Q. *A*, the wife of *B*, after twenty years of happy marriage, was informed by *B* that he was leaving her and would be suing for a nullity decree on the grounds of incapacity or refusal to consummate. He left shortly after, and nullity proceedings were taken by him, and the petition was eventually dismissed. After twenty-one months, *B* has written, through his solicitors, to say that he intends to return to the matrimonial home with a view to living a completely separate existence. *A* cannot prevent him doing so, as the house is in *B's* name, although *A* has a claim under the Married Women's Property Acts and proposes to pursue that claim through the court. No *bona fide* offer of a reconciliation has been made by *B*. The original desertion will not be terminated. A separate existence under one roof is not likely to be satisfactory, and *A* contemplates leaving. The question is whether, by so doing, she will lose her grounds in desertion on a petition for dissolution being filed by her after three years.

A. The difficulty of advising confidently whether the wife would lose her prospective right to allege desertion for three years if she in the meantime left the house so as to avoid the "separate existence" proposed by the husband is illustrated by the contrast between *Bartram* v. *Bartram* [1950] P. 1 and *Bull* v. *Bull* [1953] P. 224. *Abercrombie* v. *Abercrombie* [1943] 2 All E.R. 465 and *Thomas* v. *Thomas* [1948] 2 K.B. 294 may also be read for some guidance. On the whole, we agree that the husband's present proposal does not amount to an offer of reconciliation such as to determine his desertion, but think it may be dangerous to her chances for the wife to leave the house at once. If the consequences of leading separate lives can be said to produce an adverse effect on her health then that may be a cause for leaving, and perhaps also for an allegation of cruelty.

Partnership—Loan to Partner—Whether Partnership Debt

Q. In 1952 our client, *H*, lent £400 to *B* for the purpose of his business, the *B* Engineering Company. He was handed a receipt in the words "This is a receipt for £400 representing 400 £1 shares in the above-named company." It was signed by *B* over a 6d. stamp with the words "for and on behalf of the company." The paper on which the receipt was given has the letter-heading "*B* Engineering Company" but does not comply with the Registration of Business Names Act in that no names of the partners are given. When lending this money *H* was under the impression that *B* was the sole partner in the firm. He considered this transaction as a straightforward loan and not as an assignment of a share in the business. The money was paid as to £200 by building society cheque and as to the balance in bank notes. At the beginning of 1953 *B* had a receiving order made against him, and has now disappeared. It appears certain that there will be no dividend from his separate estate. It has since transpired that *B* had a partner, *P*, in the *B* Engineering Company who is still carrying on business at the same premises, and appears to be in quite a substantial way. Partnership accounts have been agreed with the Official Receiver as at the date of the receiving order, which shows a credit balance on *B's* capital account of £40. *P* has, of course, assumed liability for all the partnership trade liabilities. In arriving at the figure of £40, credit has been given for various sums introduced by *B* into the partnership business from time to time and a sum of £200 was credited in 1952 which appears to be the cheque handed to *B* by *H*. This cheque was endorsed with *H's* signature and a rubber stamp impression of "*B* Eng." It would appear that the £200 in cash has not been paid by *B* into the partnership account. Our inquiry is, of course, whether *H* has a claim against *P* either for £200 or £400. It would appear that, unless it is in the normal course of a firm's business, a partner has no implied authority to borrow money for the purposes of the partnership. On the other hand, *P* has had the benefit of at least part of the money introduced by *B*, since if the £200 had not been paid in, *B's* capital account would be overdrawn to the extent of £160 which *P* would have little chance of recovering. It would appear that the case of *Re Hodgson*; *Beckett* v. *Ramsdale* (1885), 31 Ch. D 177, might afford our client some assistance.

A. Whether the partnership has had the benefit of a contract does not determine whether it is bound thereby (cf. Lindley on Partnerships, 11th ed., p. 262). The question is whether *B* accepted the loan as agent for the firm, and with authority to do so. Does *P* accept or repudiate the authority of *B* to accept the loan? Presumably he repudiates it, and will contend that the loan was in fact made to *B* personally. On this footing the £200 was capital deposited by *B*, the partnership not being concerned with the question where *B* got it. If *H* could prove that the amount of his loan was used to pay any particular creditor or creditors he might have a claim to be subrogated to the rights of those creditors (see Lindley, pp. 263–4). But this seems improbable. In all the circumstances it looks as if *H's* only claim is against *B's* estate. In view of the terms of the receipt he may consider himself lucky not to be held responsible for the partnership debts. He really should have disputed the reference to a share in the business if he wished to be considered a mere loan creditor. *Re Hodgson*, mentioned in the query, does not appear to assist. In that case a creditor proved in the estate of a deceased trader, knowing of, but not being in a position to prove, a partnership with his father. Later the father died, and the creditor, having by this time acquired evidence of the partnership, was held entitled to sue the father's estate notwithstanding that he had previously proceeded against the separate estate of the son. This case does not touch the vital point in the present case—whether the liability to *H* is a partnership debt at all.

Agricultural Holdings Act, 1948—Letting for 364 days with Option of Further Lettings—Whether Subject to Act

Q. The *P* golf club owns a farm upon which the *P* golf course has been laid out. Part of the farm not required for golf has been let by the club to an adjoining farmer, and there is no doubt that the provisions of the Agricultural Holdings Act, 1948, apply to the tenancy. The farmer has in addition been granted facilities to graze his sheep on the golf course proper for periods one day less than a full year. One of the terms of this agreement, which has been consistently renewed, is that the farmer should repair and maintain the long dry stone wall which divides the course from the mountain top which forms part of the common of the Manor of *A*. According to the custom of this manor farmers whose land adjoins the common may graze their sheep thereon subject to a liability to fence against the common. The obligation to repair and maintain the mountain wall is, in the farmer's opinion, an onerous one, but he is prepared to undertake it if the committee will grant him an agreement to graze the golf course for a minimum period of four years. The club's committee does not object in principle to granting the farmer this security, but it does not wish to grant the farmer any tenancy which will be subject to the Agricultural Holdings Act and will give the right to the farmer to appeal against any notice to quit at some relatively distant future date when the removal of the sheep from the golf course may be desired. The golf club is therefore prepared to enter into an immediate agreement with the farmer for the letting of the land for a period of 364 days and to grant the farmer an irrevocable option of three further lettings of 364 days, each to be exercised as each current period of letting expires. Would such an agreement keep the several lettings outside the provisions of the Agricultural Holdings Act?

A. In our opinion, there is at least indirect support to be found for the proposition that the presence of the option would not make the agreement an agreement for the letting of the land during more than 364 days, there being no obligation to renew. Thus, a three years' tenancy providing for renewal is valid though made orally (Law of Property Act, 1925, s. 54 (2), and *Hand* v. *Hall* (1877), 2 Ex. D. 355); the reasoning (though not the

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 21 Red Lion Street, London, W.C.1.

They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

actual decision) in *Gas Light & Coke Co.* v. *Towse* (1887), 35 Ch. D. 519 (covenant for renewal in lease under powers) likewise points to a conclusion that an option is not a grant. The distinction can also be said to have been emphasised by *Hollies Stores, Ltd.* v. *Timmis* [1921] 2 Ch. 202 (renewal impossible because one surety dead). We would be inclined to rely most strongly on *Hand* v. *Hall;* and *Reid* v. *Dawson* [1954] 3 W.L.R. 810; 98 SOL. J. 818, has, of course, decided that 364 days is a "specified period of the year" unless and until the House of Lords should take a different view.

Will—PECUNIARY LEGACY—WHETHER A "CHATTEL PERSONAL" WITHIN PAROCHIAL CHURCH COUNCILS (POWERS) MEASURE, 1921

Q. A, by her will, gave a pecuniary legacy to a parochial church council. It is contended that the legacy is not a chattel personal within the meaning of s. 5 of the Parochial Church Councils (Powers) Measure, 1921, and therefore the consent of the diocesan authority has to be obtained, to enable the legacy to be paid to the parochial church council. Is this a correct contention, or can the money be paid direct to the parochial church council?

A. We know of no precise authority on the construction of the expression "chattels personal" in s. 5 of the Parochial Church Councils (Powers) Measure, 1921. We see, however, no reason to bestow upon these words any narrow construction and "chattels personal" has generally been held to mean all personal property with the exception of leaseholds: Shep. Touch., 97, 98; *Kendall* v. *Kendall* (1828), 28 R. R. 125. In the Bankruptcy Acts the word "chattels" has always included choses in action: *Colonial Bank* v. *Whinney* (1885), 30 Ch. D. 261; Bankruptcy Act, 1914, s. 167. Logically, the expression in the Measure of 1921 would appear to have been used in contradistinction to "chattels real," i.e., leaseholds. In our opinion a pecuniary legacy is outside the section and the consent of the diocesan authority is not required.

NOTES AND NEWS

Honours and Appointments

The Queen has been pleased to approve the appointment of Sir PETER BELL, Chief Justice, British Guiana, to be Chief Justice in Northern Rhodesia.

The Queen has been pleased to approve the appointment of Mr. F. W. HOLDER, Attorney-General, British Guiana, to be Chief Justice of that territory in succession to Sir Peter Bell.

Personal Notes

Mr. E. G. B. Fowler has resigned the coronership of Leicester, an office he has held for fifty years. Mr. Fowler, who is 84, was clerk to the Leicester County Magistrates and the Rutland Magistrates for more than forty years until his retirement from both offices in 1948.

Miscellaneous

The Rt. Hon. the Lord High Chancellor will take the chair at the annual general meeting of THE BARRISTERS' BENEVOLENT ASSOCIATION which will be held in Gray's Inn Hall on Monday, 23rd May, 1955, at 4.45 o'clock.

THE LAW SOCIETY

At The Law Society's Intermediate Examination on 24th and 25th March, 1955, 143 candidates were successful out of 231 who gave notice for the law portion only (Mr. C. C. E. M. Freedman being placed in the First Class). Of those giving notice for the trust accounts and book-keeping portion only, who numbered 479, there were 277 successful candidates.

RATING RETURN FOR 1954–55

An analysis of rates and rateable values published by the Ministry of Housing and Local Government (*Rates and Rateable Values in England and Wales*, 1954–55. H.M.S.O., price 3s.) shows that the average rate levied in England and Wales for 1954–55 was 22s. 8d., compared with 22s. 2d. for 1953–54. There were rate increases compared with 1953–54 in 959 rating areas, decreases in 173, and there was no change in 335. The rateable value of all property was £353,924,000, compared with £347,278,000. Provisional receipts of local authorities from rates totalled £392,000,000, compared with £376,000,000 in 1953–54. Detailed figures of rates for each local authority area show that the most highly rated urban authority during the year under review was Gelligaer U.D.C., in Glamorganshire, with a rate of 35s. 3d. in the £. Bournemouth and Eastbourne, each with a rate of 15s., were again the lowest rated boroughs in England and Wales. The lowest rated Urban District was Caerleon, in Monmouthshire, with a rate of 17s. 10d.

DEVELOPMENT PLANS

COUNTY BOROUGH OF CARLISLE DEVELOPMENT PLAN

On 25th April, 1955, the Minister of Housing and Local Government amended the above Development Plan. A certified copy of the plan as amended by the Minister has been deposited at the Town Clerk's Office, Fisher Street, Carlisle, and will be open for inspection free of charge by all persons interested between the hours of 9 a.m. and 5 p.m. on ordinary weekdays and between 9 a.m. and 11.30 a.m. on Saturdays. The amendment became operative as from 29th April, 1955, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 29th April, 1955, make application to the High Court.

OBITUARY

SIR CLIVE BURN

Sir Roland Clive Wallace Burn, K.C.V.O., solicitor to the Duchy of Cornwall from 1940 to 1954, died on 8th May, aged 72. Admitted in 1908, he practised in London until his appointment as solicitor to the Duchy, thereafter devoting his full time to its affairs. He was created C.V.O. in 1942 and promoted K.C.V.O. in 1948. He was a notable cricketer in his undergraduate days and played in the Oxford University XI from 1902 to 1905. In 1905 he was also a member of the touring teams that visited the West Indies and America.

MR. J. K. DAVIES

Mr. John Kenneth Davies, solicitor, of Cardiff, died whilst playing cricket on 7th May, aged 32. He was admitted in 1949.

MR. D. R. EVANS

Mr. David Rudolf Evans, solicitor, of Newcastle Emlyn, Carmarthenshire, died on 9th May, aged 76. He was admitted in 1903.

MR. D. J. PHILLIPS

Mr. David John Phillips, solicitor, Town Clerk of Llanelly from 1935 to 1952, died on 8th May, aged 68. Admitted in 1929, he was captain of the Welsh team which won the International Bowls Championship in 1946.

MR. G. W. TOMPKINS

Mr. Geoffrey William Tompkins, solicitor, of Hitchin, died on 22nd April. He was admitted in 1947.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 102–103 Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £3 15s., Overseas £4 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).